



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-2114-SB-2014
Reserved on 11.11.2024
Date of decision: 14.01.2025

Nirmal Singh ...Appellant

Versus

State of Punjab ...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Argued by: Mr. Nandan Jindal, Advocate for the appellant.

Mr. J.S. Dhaliwal, AAG, Punjab.

KARAMJIT SINGH, J.

1. The present appeal is directed against the judgment and order dated 03.02.2014 passed by the Court of Special Judge, Ferozepur vide which the appellant/accused was convicted and sentenced to rigorous imprisonment for a period of two years and to pay a fine of Rs.14,000/- and in default of payment of fine, to further undergo rigorous imprisonment for a period of three month, under Section 18(c) of the NDPS Act.

2. Briefly stated, the facts giving rise to the present appeal are that on 21.09.2010, the police party headed by PW-1 ASI Kartar Singh apprehended the appellant from the area of village Diwan Khera, on the basis of suspicion and at that time, the appellant was carrying one polythene bag in his right hand. PW-1 ASI Katar Singh informed the appellant about his legal right to be searched before a Magistrate or a Gazetted Officer. The appellant consented to be searched by PW-1 ASI Kartar Singh. To this



effect, consent memo Ex.P-1 was prepared. In the meantime, independent witness Hansraj came there and he was associated in the police party. On checking of the aforesaid polythene bag, 700 grams of opium was recovered. The investigating officer separated two samples each weighing 10 grams out of the bulk. The said two samples and the remaining bulk were sealed by investigating officer with his seal having impression 'KS'. Separate sample seal impression was also taken on Form No.M-29 and after use the investigating officer handed over his seal to PW-2 HC Bal Krishan. The entire case property was taken into possession by the police vide memo Ex.P-3 attested by PW-2 HC Bal Krishan and HC Birbal Singh. The appellant was formally arrested and the investigating officer also prepared the rough site plan of the place of recovery Ex.P-8. Ruqa Ex.P-5 was also sent to the police station by the investigating officer, on the basis of which FIR Ex.P-6 was registered in the police station. On completion of investigation at the spot, the appellant along with the entire case property was produced before PW-3 ASI/officiating SHO Balbir Singh, who checked the entire case property and then appended his seal bearing impression 'BS' on the entire case property and sample seal impression was also taken on Form No.M-29. Thereafter, the case property was deposited in malkhana while the appellant was sent to police custody. On the next day, the appellant along with the entire case property was produced before the Illaqa Magistrate concerned along with police request Ex.P-14 wherein the detail of the case property was given. One representative sample of 10 grams was separated, out of the bulk parcel weighing 680 grams. The said sample was sealed by the Illaqa Magistrate concerned with his seal having impression



‘RV’. Separate sample seal impression was also prepared. The Illaqa Magistrate concerned passed order Ex.P-15 in this regard. One of the sealed sample parcels was sent to the FSL for its analysis. As per the report of FSL Ex.P-11, the said sample was found to be that of opium. On completion of investigation, police presented challan against the appellant.

3. The trial Court charged the appellant under Section 18 of NDPS Act to which the appellant pleaded not guilty and claimed to be tried.

4. The prosecution examined four witnesses in all to prove its case. PW-1 ASI Kartar Singh proved consent memo Ex.P-1, recovery memo Ex.P-3, ruqa Ex.P-5, FIR Ex.P-6, arrest memo Ex.P-9 and site plan Ex.P-8 he being the investigating officer. He also proved Form No.M-29 Ex.P-2. PW-2 HC Bal Krishan corroborated the statement made by PW-1, being recovery witness PW-3 ASI Balbir Singh who at the relevant time was officiating SHO, also corroborated the statement of PW-1. He also proved inventory proceedings which were conducted in presence of the Illaqa Magistrate. He further proved police requests Ex.P-12 and Ex.P-14 and the concerned orders Ex.P-13 and Ex.P-15 passed by the Illaqa Magistrate concerned. PW-4 HC Sukhwinder Singh tendered his affidavit Ex.PW-4/A wherein he stated that on 23.09.2010, he was handed over one sealed parcel weighing 10 grams bearing seal impressions ‘KS’ and ‘BS’ along with Form No.M-29 bearing sample seal impressions ‘KS’ and ‘BS’, with direction to deposit the same in the office of FSL Kharar and he did the needful and on return to police station, he handed over the concerned receipt to ASI Balbir Singh. The prosecution had given up HC Birbal Singh, ASI Sukhmander Singh and SHO Gurbhej Singh being unnecessary



witnesses and PW Hansraj being won over by the accused and the State counsel closed its evidence.

5. The appellant in his statement recorded under Section 313 Cr.P.C denied the prosecution case in its entirety. He stated that he was innocent and the witnesses deposed against him falsely. However, the appellant did not lead any defence evidence.

6. After hearing the counsel for the parties, the learned trial Court convicted and sentenced the appellant vide impugned judgment and order dated 03.02.2014 for possessing 700 grams of opium, as has been detailed in the opening paragraph of this judgment.

7. Being aggrieved, the appellant has filed the present appeal.

8. While assailing the impugned judgment and order, the counsel for the appellant has asserted that the appellant is innocent and deserves to be acquitted. It is further asserted that the investigating officer separated two samples at the place of recovery out of total bulk and one said sample was sent for analysis, in violation of the ratio laid down by Hon'ble Supreme Court in *Union of India Vs. Mohan Lal (2016) 3 SCC 379*, which was further relied by the Hon'ble Supreme Court in *Bothilal Vs. The Intelligence Officer, Narcotics Control Bureau 2023 (2) RCR (Criminal) 828*. The counsel for the appellant has further argued that the sample which was separated in presence of the Illaqa Magistrate concerned was not sent for analysis and thus, the entire proceedings stand vitiated.

9. The counsel for the appellant has further asserted that as per prosecution version, the recovery in question was effected in presence of independent witness namely Hansraj. It has been further submitted that the



presence of the said independent witness at the time of recovery seems to be highly doubtful, as the consent memo Ex.P-1 is not bearing signatures of any such independent witness. Further, the seal after use was not handed over by the investigating officer to so called independent witness, after its use, at the spot. Furthermore, the said independent witness was not examined in the Court.

10. On the other hand, the State counsel while supporting the judgment and order dated 03.02.2014 passed by the learned trial Court has contended that the learned trial Court rightly convicted and sentenced the appellant, after going through the entire evidence led by the prosecution. It has been further submitted that the sample which was separated and sealed by the investigating officer at the spot, reached the office of FSL in its intact condition at the earliest and on its analysis the said sample was found to be that of opium. The contraband which was recovered from the appellant was covered under non commercial quantity. It has been further argued that the appeal filed by the appellant deserves to be dismissed being devoid of merits.

11. I have considered the submissions made by counsel for the parties.

12. From the perusal of the record of the trial Court, it transpires that the investigating officer namely PW-1 ASI Kartar Singh separated two samples each weighing 10 grams out of the total bulk of opium weighing 700 grams, at the place of recovery and he sealed the entire case property by appending his seal bearing impression 'KS'. On return to police station, the entire case property was checked and after verifying the facts of the case



PW-3 ASI/officiating SHO Balbir Singh appended his seal bearing impression 'BS' on the entire case property. On the next day of recovery, the entire case property along with the appellant was produced before the Illaqa Magistrate along with police request Ex.P-14, detailing the entire case property. On the said police request, one representative sample of 10 grams out of the bulk parcel weighing 680 grams, was separated and sealed by the Illaqa Magistrate concerned with his seal bearing impression 'RV' and the concerned order passed by the Illaqa Magistrate with regard to inventory proceedings is Ex.P-15.

13. As per the deposition of PW-4 HC Sukhwinder Singh who tendered his affidavit Ex.PW-4/A, it is evident that he deposited one sealed sample parcel bearing seal impressions 'KS' and 'BS' along with Form M-29 in the office of FSL, Kharar on 23.09.2010. Thus, it is established on the record that the sample which was separated and sealed with seal having impression 'RV' by the Illaqa Magistrate concerned was not sent for analysis to FSL, Kharar and rather the sample which was separated by the investigating officer at the place of recovery was sent for its examination to the concerned laboratory.

14. The Hon'ble Supreme Court in *Mohan Lal's case (supra)* while enumerating scope of Section 52-A of NDPS Act held that there is no provision in the NDPS Act that mandates taking of samples at the time of seizure. The Hon'ble Supreme Court further observed as follows:-

“Sub-section (3) of [Section 52-A](#) requires that the Magistrate shall as soon as may be allow the application. This implies that no sooner the seizure is effected and the contraband forwarded to the officer in charge of the Police Station or the officer empowered, the officer concerned is in law duty bound to approach the



Magistrate for the purposes mentioned above including grant of permission to draw representative samples in his presence, which samples will then be enlisted and the correctness of the list of samples so drawn certified by the Magistrate. In other words, the process of drawing of samples has to be in the presence and under the supervision of the Magistrate and the entire exercise has to be certified by him to be correct.”

15. Recently, Hon’ble Supreme Court in **Simranjit Singh v. State of Punjab**, 2023 SCC Online SC 906, while placing reliance upon its earlier decision in **Mohan Lal's** case (supra) held that mandate of Section 52-A of the NDPS Act was not complied with and consequently, acquitted the accused while making the following observations :

*“10. Hence, the act of PW-7 of drawing samples from all the packets at the time seizure is not in conformity with the law laid down by this Court in the case of **Mohanlal**. This creates a serious doubt about the prosecution's case that substance recovered was a contraband.*

11.Hence, the case of the prosecution is not free from suspicion and the same has not been established beyond a reasonable doubt. Accordingly, we set aside the impugned judgments insofar as the present appellant is concerned and quash his conviction and sentence.”

16. Now reverting back to the facts of the present case, as the sample which was separated in presence of the Illaqa Magistrate concerned was not sent for analysis, it could be easily made out that the proper procedure as per the mandate of Section 52-A NDPS Act, coupled with the law laid down in **Mohan Lal's case** (supra), was not complied with.

17. As per prosecution version, the recovery of the contraband was effected in presence of independent witness Hansraj. From the perusal of the record, it is apparent that the investigating officer, after appending his seal ‘KS’ on the case property, did not handover the seal to independent witness Hansraj, at the place of recovery. Admittedly, the said independent witness was given up by the prosecution being won over by the accused. Undoubtedly, consent memo Ex.P-1 is not bearing attestation of Hansraj. These circumstances are sufficient to doubt the presence of independent



witness Hansraj at the time of recovery. It is also proved on the record that the seals appended on sample parcel, which was sent for analysis to FSL, remained with the police officials. It is also established on the record that the sample separated in presence of Illaqa Magistrate bearing seal impression 'RV' was not sent for analysis to the laboratory concerned. It is also pertinent to note that in report of FSL Ex.P-11, there is no mention that when the sample parcel reached in the laboratory, the seals were found intact and tallied with the specimen seal impressions. The proper detail of the concerned sample which was received in the laboratory, is not given in the report of FSL Ex.P-11, as the same is silent with regard to exact description of the seal impressions which were there on the sample parcel. In the given circumstances, the prosecution has failed to prove that the sample which was separated at the spot, reached the office of FSL in its intact condition. Further, as the seals affixed on the said sample, remained with the police officials, the possibility of tampering with the said sample till it reached the concerned laboratory, could not be ruled out.

18. In the light of the above, the case of the prosecution is not free from suspicion. The conviction of appellant cannot be sustained. Accordingly, the impugned judgment and order dated 03.02.2014 passed by the Court of Special Judge, Ferozepur are set aside and appellant is acquitted of the offence alleged against him.

19. The appeal stands allowed in aforesaid terms.

14.01.2025

YOGESH

**(KARAMJIT SINGH)
JUDGE**

Whether speaking/reasoned:-

Yes/No

Whether reportable:-

Yes/No